

ORDINANCE NO. 199, SERIES 2010

AN ORDINANCE ESTABLISHING A DEVELOPMENT AREA PURSUANT TO PROVISIONS OF KRS 65.7041- 65.7083 TO BE KNOWN AS THE UNIVERSITY OF LOUISVILLE DEVELOPMENT AREA, DESIGNATING THE LOUISVILLE MEDICAL CENTER DEVELOPMENT CORPORATION AS AN "AGENCY", ADOPTING A DEVELOPMENT PLAN, APPROVING ENTERING INTO A LOCAL PARTICIPATION AGREEMENT, AUTHORIZING THE PAYMENT OF THE "RELEASED AMOUNT" PURSUANT TO THE TERMS AND CONDITIONS OF THE LOCAL PARTICIPATION AGREEMENT, REQUIRING THE SUBMISSION OF REGULAR REPORTS TO LOUISVILLE AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY OTHER DOCUMENTS AND THE TAKING OF ANY OTHER ACTIONS NECESSARY TO ACCOMPLISH THE PURPOSES AUTHORIZED BY THIS ORDINANCE (Amend by Substitution).

SPONSORED BY: Councilwoman Butler

WHEREAS, the Kentucky General Assembly enacted KRS 65.7041- 65.7083 and KRS 154.30.010-154.30.090 (the "Act") relating to tax increment financing and urban redevelopment, which Act authorizes the Signature Project Program to encourage private investment in the development of major projects that will have a significant economic impact in the Commonwealth; and

WHEREAS, the Louisville Medical Center Development Corporation ("LMCDC") intends to undertake a major project within the University of Louisville Development Area (the "Development Area") to complete the University of Louisville Research Park, along with the related public infrastructure and public amenities necessary to support and compliment the University of Louisville Research Park, as more particularly described in Exhibit A attached hereto (the "Project"); and

WHEREAS, the Project will have a capital investment in excess of two hundred million dollars (\$200,000,000) and will represent new economic activity in the Commonwealth and therefore qualifies as a "Signature Project" under the Act; and

WHEREAS, in accordance with the provisions of the Act a Development Plan, attached hereto as Exhibit B (the "Development Plan") for the Development Area has been prepared and a public hearing was held on September 30, 2010 after giving proper notice concerning Louisville's intention to consider the adoption of the Development Plan; and

WHEREAS, within the Development Area as illustrated on Exhibit "B" attached hereto, there has been a substantial loss of industrial activity, at least forty percent (40%) of the households are low-income households as defined by the Act, more than half of the structures are deteriorated or deteriorating, there has been substantial abandonment of commercial and industrial structures, there is a substantial presence of

environmentally contaminated land and there are inadequate public improvements and infrastructure to support the redevelopment; and

WHEREAS, the Development Area is an area in need of public improvement and the Project to be undertaken in the Development Area by LMCDC will result in the increase in the value of property located in the Development Area and will result in increased employment within the Development Area; and

WHEREAS, it is therefore in the interest of Louisville and LMCDC that there be a plan for the optimal revitalization and development of the Development Area in a most efficient manner; and

WHEREAS, the use of tax increment financing has proven to be successful and of great benefit to areas in need of revitalization and development in other parts of the country; therefore, the development of a "Signature Project", within the meaning of Act and as presented by LMCDC, to enable Louisville and the Commonwealth to use tax increment financing to encourage major economic development projects, is a worthy public purpose; and

WHEREAS, Louisville is authorized under the Act to execute a local participation agreement with an agency in acknowledgement of benefits to be derived by Louisville within a development area in order to promote the public purpose of Louisville; and

WHEREAS, LMCDC is organized and incorporated as a non-profit tax exempt corporation and is located within Louisville; and

WHEREAS, Louisville desires to assist LMCDC with the costs of the Project and agrees to enter into the Local Participation Agreement in order to pay to LMCDC the Released Amount (as hereinafter defined) for use solely for purposes of the Project; and

WHEREAS, the adoption of the Development Plan and the establishment of the Development Area within Louisville are for a public purpose.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/ JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section 1. The Development Plan, attached hereto as Exhibit B, is hereby adopted.

Section 2. As supported by the data and findings contained in the Development Plan, the Council finds as follows:

- A. All statements of fact set forth in the recitals to this Ordinance are found true and correct and are incorporated herein by reference.
- B. The Development Area is a contiguous tract of land consisting of 826 acres and is less than three (3) square miles.

- C. The Development Area constitutes previously developed land as required by KRS 65.7034.
- D. The establishment of the Development Area will not cause the assessed taxable value of real property within the Development Area and within all "development areas" and "local development areas" established by Louisville (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within Louisville.
- E. The Development Area is not reasonably expected to be developed without public assistance.
- F. The public benefits to be derived by the Project justify the public costs to Louisville.
- G. Portions of the area immediately surrounding the Development Area has been subject to limited growth and development through investment by private enterprise, but there exist inadequate public infrastructure in the Development Area and the costs required to repair and improve existing infrastructure and to construct new infrastructure prevents the development without public assistance.
- H. The conditions within the Development Area meet the criteria described in KRS 65.7049.

Section 3. That the Development Area as illustrated in Exhibit C is designated as a development area pursuant to the Act and shall be named the University of Louisville Development Area and shall be established as of the effective date of this Ordinance and shall terminate on the earlier of (a) the termination of the Local Participation Agreement, attached hereto as Exhibit D, or (b) 40 years from the date hereof.

Section 4. That the Louisville Medical Center Development Corporation, a Kentucky non-profit corporation (a) is designated as the Agency, pursuant to the terms of the Act, (b) shall be the recipient of the Released Amount under the Local Participation Agreement and (c) shall be required to oversee and administer the implementation of the Project within the Development Area. No less than annually, LMCDC shall (a) submit a report to the Kentucky Economic Development Finance Authority (i) certifying the use of the Released Amount for the payment of Eligible Project Costs, as defined in the Local Participation Agreement within the Development Area, and (ii) providing an accounting of the receipt and use of the Released Amount, and (b) submit the report to the Office of Management and Budget pursuant to the Local Participation Agreement.

Section 5. That the Mayor is authorized to negotiate and enter into a Local Participation Agreement (substantially in the form attached hereto as Exhibit D) with LMCDC for the release to LMCDC of a portion of the new withholding tax revenues and new real estate tax revenues expected to be derived by Louisville from the Project to be constructed in the Development Area ("Released Amount").

Section 6. That the Office of Management and Budget is designated as the department in Louisville to oversee the payment of the Released Amount and to review all documentation concerning the Project, its progress, costs and development. The Office of Management and Budget shall annually submit to the Council a report concerning the Development Area including but not limited to:

- A. An accounting of all payments made to LMCDC pursuant to the Local Participation Agreement;
- B. An analysis and review of development activity within the Development Area;
- C. The progress made toward meeting the stated goals of the Development Area;
- D. An accounting of the Eligible Project Costs, as defined in the Local Participation Agreement incurred by LMCDC.

Section 7. That the Council authorizes Louisville Metro to pay annually to LMCDC, the Released Amount which shall be a sum equal to eighty percent (80%) of the Real Estate Tax Increment and the Withholding Tax Increment (as calculated pursuant to the Local Participation Agreement) subject to the following conditions:

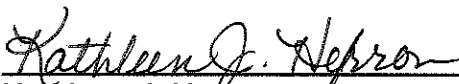
- A. Louisville shall have no obligation to pay the Released Amount to LMCDC until the Commonwealth and LMCDC have entered into an Incentive Agreement pursuant to the Act;
- B. Louisville shall withhold payment of the Released Amount until the Commonwealth certifies to Louisville, pursuant to the terms of the Local Participation Agreement, that the minimum capital investment equal to two hundred million dollars (\$200,000,000) has been made in the Project (the "Minimum Capital Investment"). Until such time that the Minimum Capital Investment has been made, the Office of Management and Budget shall deposit the Released Amount into an escrow account. Upon the certification of the Minimum Capital Investment, the Office of Management and Budget shall pay to LMCDC the accumulated balance of the Released Amount in the escrow fund ("Escrowed Amount"). In the event that the Minimum Capital investment is not certified by a date ten (10) years from the effective date of this Ordinance, the Escrowed Amount shall be paid into the General Fund and the Local Participation Agreement shall be void.
- C. In no event shall the total of the Released Amount paid to LMCDC over the term of the Local Participation Agreement exceed the Eligible Project Costs as defined in the Local Participation Agreement.

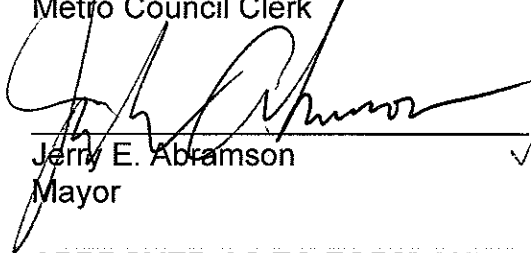
Section 8. That LMCDC shall establish a Special Fund pursuant to the Act for the Development Area as set forth in the Local Participation Agreement

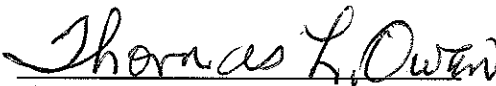
Section 9. That the Mayor and other appropriate Louisville officials, and each of them, for and on behalf of Louisville, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Local Participation Agreement, the performance of all obligations of Louisville under and pursuant to the Local Participation Agreement and related documents, and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and the Local Participation Agreement. The Mayor and other appropriate Louisville officials, and each of them, are hereby further authorized, empowered and directed for and on behalf of Louisville to execute all papers, letter, documents, undertakings, certificates, assignments, forms, instruments and closing papers that may be required for the carrying out and effectuation of the authority conferred by and for the purposes of this Ordinance and the Local Participation Agreement, or to evidence said authority and purposes, and to exercise and otherwise take all action necessary to the full realization of the rights and purposes of Louisville under the Local Participation Agreement and related documents and to perform all of the obligations of Louisville under the Local Participation Agreement and related documents.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrases or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

Section 11. This Ordinance shall take effect on January 1, 2011.


Kathleen J. Heffron
Metro Council Clerk


Jerry E. Abramson ✓
Mayor


Thomas L. Owen
President of the Council

10-8-10
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney



By: 

Exhibits

- A. Description of Project
- B. Development Plan
- C. Map of Development Area
- D. Local Participation Agreement

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
LOCAL PARTICIPATION AGREEMENT
UNIVERSITY OF LOUISVILLE RESEARCH PARK
WITHIN THE
UNIVERSITY OF LOUISVILLE DEVELOPMENT AREA
(AMEND BY SUBSTITUTION)**

LOCAL PARTICIPATION AGREEMENT

This **LOCAL PARTICIPATION AGREEMENT** (the "Agreement") effective as of the 1st day of January, 2011, by and between (i) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government ("Louisville") and (ii) the **LOUISVILLE MEDICAL CENTER DEVELOPMENT CORPORATION**, a Kentucky non-profit corporation ("LMCDC").

RECITALS:

WHEREAS, LMCDC, Louisville and the Commonwealth of Kentucky (the "Commonwealth"), intend to cause the investment of approximately \$1.1 billion in the development of the University of Louisville Research Park, as described in Exhibit A attached hereto ("the Project").

WHEREAS, Louisville, to induce LMCDC to undertake the Project, agrees to release to LMCDC a portion of the new tax increments created by the Project pursuant to KRS 65.7041-65.7083 and KRS 154-30.010 -154-30.090 (the "Act"); and

WHEREAS, pursuant to the Act, the Metro Council of Louisville pursuant to the provisions of the Act, by Ordinance No _____ Series 2010 (the "Ordinance"), has established the University of Louisville Development Area (the "Development Area") and has designated the Project site within a Development Area, as more particularly depicted in Exhibit B attached hereto (the "Footprint"); and

WHEREAS, the Project shall represent new economic development in Louisville; and

WHEREAS, Louisville finds that the Development Area is an area in need of public improvement and that the Project to be undertaken in the Footprint of the Development Area, as presented to Louisville by LMCDC in preliminary planning papers, will result in the increase in the value of property located in the Development Area and result in increased employment within the Development Area; and

WHEREAS, the Project qualifies as a "Signature Project" under KRS 154.30.050 of the Act, relating to incentives for development and redevelopment; and

WHEREAS, it is therefore in the interest of Louisville and LMCDC that there be a plan for the optimal revitalization and development of the Development Area in a most efficient manner; and

WHEREAS, the use of tax increment financing has proven to be successful and of great benefit to areas in need of revitalization and development in other parts of the country; therefore, the development of a "Signature Project," within the meaning of the Act and as presented by LMCDC, will enable Louisville and the Commonwealth to use tax increment financing to encourage major economic development and is a worthy public purpose; and

WHEREAS, Louisville is authorized under the Act to execute a local participation agreement or contract with an agency in acknowledgement of benefits to be derived by Louisville within a development area in order to promote the public purpose of Louisville; and

WHEREAS, the Ordinance declares the Development Area to be a "development area" within the meaning of the Act, and the Project constitutes a "project" within the meaning of the Act; therefore, the Project is eligible to be financed through the use of tax increment "local participation agreements," "incentive agreements" and "contracts of release" within the meaning of the Act;

WHEREAS, LMCDC is organized and incorporated as a not-for-profit corporation which has obtained tax-exemption charitable status and is located within Louisville/Jefferson County Metro Government; and

WHEREAS, pursuant to the Ordinance, LMCDC has been designated as the "agency," within the meaning of the Act for the purposes of identifying, developing, acquiring, financing and accomplishing the Project and entering into one or more grant agreements with the Commonwealth; and

WHEREAS, Louisville desires to assist LMCDC with the costs of the Project and agrees to enter into this Local Participation Agreement in order to release to LMCDC a portion of the Withholding Tax Increment and Real Estate Tax Increment (as hereinafter defined) for use solely for purposes of the Project; and

NOW THEREFORE, Louisville and LMCDC agree that in consideration of the premises and the additional consideration provided herein, the parties agree as follows:

Section 1. Definitions.

In addition to the terms defined in the above recitals, the following additional terms used in this Agreement shall have the meanings assigned in this Section 1 unless the context clearly indicates that a contrary meaning is intended.

(a) **"Account Numbers"** shall mean the separate Withholding Tax Numbers for businesses located in the Footprint of the Development Area as determined pursuant to Section 3.1 of this Agreement.

(b) **"Activation Date"** means January 1, 2013, being within two (2) years of the Commencement Date which, upon the written request of LMCDC to the Commonwealth and Louisville, may be extended, but in no event more than four (4) years from the Commencement Date.

(c) **"Base Year"** means January 1, 2010 through December 31, 2010, the last full year prior to the Commencement Date.

(d) **"Calendar Year"** means January 1 through and including December 31.

(e) **"Commencement Date"** shall mean the later of (i) the effective date hereof or (ii) the effective date of the Local Participation Agreement.

(f) **"Eligible Project Costs"** shall mean the Project Expenditures certified by the Office pursuant to Section 4.3 of this Agreement, and other costs as may be agreed by Louisville and LMCDC.

(g) **"New Withholding Tax Revenue"** means the amount of Withholding Taxes received by Louisville after the Activation Date has occurred through the term of this Agreement.

(h) **"Occupational License Fees"** means the taxes levied on employees by Louisville pursuant to Louisville Metro Codified Ordinances Chapter 110.

(i) **"Office"** means the Kentucky Economic Development Finance Authority ("KEDFA"), as provided by the Act.

(j) **"Old Withholding Tax Revenue"** means the amount of Withholding Taxes received by Louisville in the Base Year, which shall be increased each year by the same percentage applicable to "old state revenues" as provided in the Incentive Agreement.

(k) **"Termination Date"** means the date ending thirty (30) years from the Activation Date, unless terminated earlier pursuant to Section 4.1 of this Agreement.

(l) **"Incentive Agreement"** means the agreement entered into between the Commonwealth and LMCDC pursuant to the terms of the Act.

(m) **"Office of Management and Budget"** means the department of Louisville with that name.

(n) **"Released Amount"** means the amount payable in each Calendar Year from Louisville to LMCDC pursuant to Section 5.4 of this Agreement.

(o) **"Withholding Taxes"** means the Occupational License Fees received by Louisville from or attributable to the Footprint within the Development Area.

(p) **"Withholding Tax Increment"** means the incremental amount of Withholding Taxes collected in each Calendar Year following the Activation Date, during the term hereof, determined by subtracting the amount of Old Withholding Tax Revenue from the amount of New Withholding Tax Revenue.

(q) **"Footprint"** means the Project site within the Development Area described on Exhibit B.

(r) **“Real Estate Tax”** means the real estate taxes levied annually by Louisville applicable to real property within the Footprint.

(s) **“Old Real Estate Tax Revenue”** means the amount of Real Estate Taxes received by Louisville in the Base Year, which shall be increased each year by the same percentage applicable to “old state revenues” as provided in the Incentive Agreement.

(t) **“New Real Estate Tax Revenue”** means the amount of Real Estate Taxes received by Louisville after the Activation Date has occurred through the term of this Agreement.

(u) **“Real Estate Tax Increment”** means the incremental amount of Real Estate Taxes collected in each Calendar Year following the Activation Date, during the term hereof, determined by subtracting the amount of Old Real Estate Tax Revenue from the amount of New Real Tax Revenue.

Section 2. Representations and Warranties.

2.1 Representations and Warranties of LMCDC. LMCDC represents and warrants to Louisville as follows:

(a) **Existence.** LMCDC is a duly organized and validly existing non-profit corporation created under the laws of the Commonwealth of Kentucky.

(b) **Authority to Act.** LMCDC has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement, in accordance with its terms and conditions. The officers and officials executing and delivering this Agreement on behalf of LMCDC have been or are otherwise duly authorized to enter into this Agreement on behalf of LMCDC.

(c) **Validity of Agreement; Compliance with Law.** This Agreement is the legal, valid, and binding obligation of LMCDC enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by LMCDC of the terms and conditions thereof do not and will not materially violate any of the provisions of LMCDC’s Articles of Incorporation or any laws applicable to LMCDC.

(d) **Litigaton.** No litigation or proceeding involving LMCDC is pending or, to the best of the knowledge of LMCDC, is threatened in any court or administrative agency which, if determined adversely to LMCDC could have a materially adverse impact on the ability of LMCDC to perform any of its obligations under this Agreement.

(e) **Conflicting Transactions.** The culmination of the transactions contemplated hereby and the performance of the obligations of LMCDC under and by virtue of this Agreement shall not result in any material breach of, or

constitute a default under, any contract, agreement, lease, indenture, bond, note, loan or credit agreement to which it is a party or by which it is bound.

(f) **Incentive Agreement.** That following the execution of this Agreement, LMCDC shall file an application with the Office seeking designation of the Project as a Signature Project, and requesting that the Office approve an Incentive Agreement with LMCDC providing State incremental revenues to pay for Eligible Project Costs.

2.2 Designation of Subsidiary or Related Entity. Notwithstanding the provisions of Subsection 2.1, LMCDC shall have the right to designate as the "Agency" a subsidiary or related entity of LMCDC provided that such subsidiary or related entity (i) qualifies as an agency pursuant to the Act, (ii) such subsidiary entity can make to Louisville the representations and warranties required pursuant to subsection 2.1, and (iii) such subsidiary or related entity is reasonably acceptable to Louisville.

2.3 Representations and Warranties of the Louisville. Louisville represents and warrants to LMCDC as follows:

(a) **Authority to Act.** Louisville has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement in accordance with its terms and conditions. Each of the officials executing and delivering this Agreement on behalf of Louisville has been and is duly authorized to enter into this Agreement on behalf of Louisville.

(b) **Validity of Agreement; Compliance with Law.** This Agreement is the legal, valid and binding obligation of Louisville enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by Louisville of the terms and conditions thereof, do not and will not violate any provisions of any laws applicable to Louisville.

2.4 Bond Financing. If requested by LMCDC, Louisville agrees to request the Metro Council to authorize the issuance of Industrial Revenue bonds for the Project, or a portion of the Project, provided that **any bonds issued by Louisville pursuant to this agreement and secured solely be incremental revenues shall not constitute a debt of Louisville or the state nor shall the bonds be a charge against the general credit or taxing powers of Louisville or the state. Louisville and the state shall have no obligation toward the payment of such bonds beyond the pledge of incremental revenue as provided in this Agreement.**

Section 3. Withholding Taxes.

3.1 Account Numbers. LMCDC accepts the sole responsibility to identify all businesses located in the Footprint so that Louisville can assign separate Withholding Tax numbers (the "Account Numbers") for each business situs and each employer in the Development Area. The Account Numbers shall be used exclusively to

report Withholding Taxes within or attributable to the Footprint. Louisville agrees to cooperate with and assist LMCDC to obtain account numbers.

Section 4. Released Amount.

4.1 Term. Provided that the requirements of Section 4.2 are met, Louisville agrees to pay to LMCDC, and LMCDC does accept from Louisville, the Released Amount for each calendar year beginning in the year including the Activation Date, with payment to be made beginning in the year following: the Activation Date, and for successive calendar years continuing automatically thereafter until the earliest for successive calendar years continuing (i) that date thirty (30) years following the initial payment to LMCDC; (ii) Louisville's election to terminate this Agreement at the end of any current calendar year following written notice to LMCDC delivered at least sixty (60) days prior to such calendar year end; or (iii) the aggregate of the total of the Released Amount paid to LMCDC by Louisville and the aggregate Released Amount paid to LMCDC by the Commonwealth on a cumulative basis during the term of the Agreement equals the Eligible Project Costs as verified by the Office, and other costs as may be agreed and approved by Louisville and LMCDC.

4.2 Certification of Minimum Capital Investment. Prior to any Released Amount being paid by Louisville to LMCDC for the Project, the Office shall certify to Louisville that the minimum capital investment of \$200 million has been made as required by the Act. Any amount of the Released Amount received after the Activation Date but prior to certification of the Minimum capital investment being made shall be held in a non-interest bearing escrow account by Louisville until the minimum capital investment is certified by the Office. All accumulated amounts of the Released Amount shall be released to LMCDC upon certification. If the minimum capital investment is not certified within ten (10) years from the Activation Date, the escrow shall be forfeited to Louisville and this Agreement shall be void.

4.3 Eligible Project Costs. Louisville and LMCDC shall rely on the Office to approve or verify, as applicable, each Project Expenditure identified as Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs as defined in the Act. Other costs agreed to by Louisville and LMCDC shall be approved and verified by the Office of Management and Budget.

4.4 LMCDC Reporting. LMCDC shall submit a report to the Office of Management and Budget on or before January 31 of each year during the term of this Agreement including but not limited to:

(a) An audited certification prepared by an independent certified public accounting firm of the use and expenditure of the Released Amount by LMCDC in the preceding Calendar Year, including any Released Amount carried forward from earlier Calendar Years;

(b) An analysis and review of all development activities within the Footprint during the prior Calendar Year;

(c) A progress report on the current status of achieving the stated goals of the Project and the Development Area;

(d) A proposed spending plan for the Released Amount for the current Calendar Year; and

(e) The submission of the Report pursuant to this Section by LMCDC shall constitute submission of its request for the Released Amount required by subsection 4.6 of this Agreement.

4.5 Louisville Monitoring, Tracking and Reporting. The Office of Management and Budget shall oversee the payment of the Released Amount to LMCDC and shall review all reports received from the Commonwealth pursuant to Section 4.3 or otherwise concerning the Project, its progress, and Eligible Project Costs. The Office of Management and Budget shall review all reports received from LMCDC pursuant to Section 4.4 or otherwise and shall annually submit to the Metro Council a report concerning the Project and the Development Area including but not limited to:

(a) An accounting of all payments made to LMCDC pursuant to this Agreement in the prior fiscal year;

(b) An analysis and review of development activity within the Development Area as reported to Louisville by LMCDC;

(c) The progress made by LMCDC toward the stated goals of the Development Area as reported to Louisville by LMCDC; and

(d) An accounting of the amount of Eligible Project Costs incurred by LMCDC to date as reported to Louisville by the Office.

4.6 Time of Payment. By the earlier of (i) March 1 of each Calendar Year, beginning in the year after the year of the Activation Date or (ii) thirty (30) days after the submission by LMCDC of a request for the Released Amount under this Agreement, Louisville agrees to pay to LMCDC the Released Amount except as otherwise provided in Section 4.2 of this Agreement.

4.7 Use of Released Amount. Consistent with the Act, LMCDC covenants and agrees that it will use the Released Amount solely for Eligible Project Costs included within the Project. If the Released Amount derived under this Agreement is used to support notes, bonds or other debt obligations by or on behalf of LMCDC, LMCDC shall utilize the Released Amount received in a given year first to (1) pay the then current principal and interest payments, and (2) maintain a fully funded reserve and thereafter to provide for the retirement or defeasance of all or a portion of the remaining notes, bonds or other debt obligations.

Section 5. Determination of Released Amount.

5.1 Old Withholding Tax Revenue and Old Real Estate Tax Revenue. LMCDC shall calculate with reasonable accuracy the amounts of Old Withholding Tax Revenue and Old Real Estate Tax Revenue, and in doing so, LMCDC may make such assumptions as may reasonably be required. Louisville, through the Office of Management and Budget, agrees to provide LMCDC with such assistance and documentation as may reasonably be required to calculate the amounts of the Old Withholding Tax Revenue and Old Real Estate Tax Revenue. LMCDC shall submit its calculations of the Old Withholding Tax Revenue and Old Real Estate Tax Revenue to the Office of Management and Budget for review and approval. Upon the determination of Old Withholding Tax Revenue and Old Real Estate Tax Revenue, Louisville and LMCDC shall stipulate the amount of Old Withholding Tax Revenue and Old Real Estate Tax Revenue by written addendum to this Agreement. The amount of Old Withholding Tax Revenue and Old Real Estate Tax Revenue so stipulated shall be binding upon the parties for the term of this Agreement. An estimate of the Old Withholding Tax Revenue and Old Real Estate Tax Revenue is included in the Financial Report prepared by Meench & Shanker, LLC, which is attached as an Exhibit C to the Development Plan, which is attached to the Ordinance.

5.2 New Withholding Tax Revenue. The Office of Management and Budget shall calculate the amount of New Withholding Tax Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 4.6 of this Agreement. The Office of Management and Budget shall calculate the New Withholding Tax Revenue by aggregating the Withholding Taxes reported by businesses within the Footprint which have obtained Account Numbers for each business situs and each employer in the Footprint. Any Withholding Taxes that, by virtue of the participation by a business in a project with the Kentucky Economic Development Finance Authority ("KEDFA"), the payment of which will be taken as a credit against the Withholding Tax liability of the business, shall not be taken into account when calculating the New Withholding Tax Revenue. An estimate of the New Withholding Tax Revenue is included in the Financial Report prepared by Meench & Shanker, LLC, which is attached as an Exhibit C to the Development Plan, which is attached to the Ordinance.

5.3 New Real Estate Tax Revenue. The Office of Management and Budget shall calculate the amount of New Real Estate Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 4.6 of this Agreement. The Office of Management and Budget shall calculate the New Real Estate Tax Revenue by aggregating the Real Estate Taxes received from within the Footprint. An estimate of the New Real Estate Tax Revenue is included in the Financial Report prepared by Meench & Shanker, LLC, which is attached as an Exhibit C to the Development Plan, which is attached to the Ordinance.

5.4 Calculation of Withholding Tax Increment. The Office of Management and Budget in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.6 of this Agreement, shall calculate the Withholding Tax Increment, which shall be a sum equal to the New Withholding Tax Revenue calculated

pursuant to Section 5.2 of this Agreement minus the Old Withholding Tax Revenue calculated pursuant to Section 5.1 of this Agreement.

5.5 Calculation of the Real Estate Tax Increment. The Office of Management and Budget in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.6 of this Agreement, shall calculate the Real Estate Tax Increment, which shall be a sum equal to the New Real Estate Tax Revenue calculated pursuant to Section 5.3 of this Agreement minus the Old Real Estate Tax Revenue calculated pursuant to Section 5.1 of this Agreement.

5.6 Calculation of Released Amount. The Office of Management and Budget in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Agreement, shall calculate the Released Amount, which shall be a sum equal to eighty percent (80%) of the Withholding Tax Increment and the Real Estate Tax Increment.

Section 6. Pledge of Incremental Revenues Superior to Ordinances and Statutes.

As provided in the Act, any pledge of the Released Amount in this Agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the Activation Date to the Termination Date, supersede any statute or ordinance regarding the application or use of incremental revenues.

Section 7. Miscellaneous.

7.1 Notices. All notices or other communications hereunder from any party shall be sufficiently given, and shall be deemed given, when delivered or mailed by first class mail or overnight delivery to the other parties at their respective addresses as follows:

If to Louisville: Louisville/Jefferson County Metro Government
Economic Development Department
4448 5th St., Ste. 600
Louisville, Kentucky 40202
Attn: C. Bruce Traughber

With a copy to: _____

Attn: _____

If to LMCDC: Louisville Medical Center Development
Corporation
201 E. Jefferson Street, Ste 315
Louisville, Kentucky 40202
Attn: President and Chief Financial Officer

With a copy to: _____

Attn: _____

Section 8. Default.

8.1 Default by LMCDC. If LMCDC materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein or in the reasonable judgment of Louisville there has been a substantial decrease in LMCDC's capacity to undertake the obligations required by this Agreement, Louisville may give written notice (with a copy of said notice being given to the Office) that remedial action must be taken within thirty (30) calendar days. LMCDC shall correct such breach or default within thirty (30) days after receipt of such notice. However, if the default is not reasonably curable within thirty (30) days, then LMCDC may continue to cure the default or breach so long as Louisville is reasonably satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken, Louisville may terminate the Agreement by giving written notice to LMCDC at least ten (10) days prior to the effective date of termination and shall and be entitled to any remedy and damages available to it at law or in equity, including specific performance.

8.2 Default by Louisville. If Louisville materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, LMCDC may give written notice to Louisville that remedial action must be taken within thirty (30) days after Louisville's receipt of such written notice. However, if the default is not reasonably curable within thirty (30) days, Louisville may continue to cure the default or breach so long as LMCDC is satisfied that sufficient progress is being made toward a cure. If such action is not taken, LMCDC shall be entitled to enforce the provisions of this Agreement.

8.3 Exception. In the event of any default or termination by either party, the non-defaulting party shall be relieved of any executory obligations hereunder. Provided however, that in the event LMCDC has issued bonds for the benefit of the Project (including to pay for Eligible Project Costs) which are secured by a pledge of the Released Amount, Louisville shall not terminate the payment of the Released Amount for the period said bonds remain outstanding and LMCDC shall continue to comply with all applicable provisions of this Agreement necessary to make the bond payments with all applicable Released Amounts. Neither LMCDC nor Louisville will terminate or otherwise negatively impact any such pledge, and both parties shall fully cooperate to use the Released Amount to service such bonds.

Section 9. Miscellaneous Provisions.

9.1 Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

9.2 Severability. If any clause, provision, or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions or sections hereof.

9.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in courts of competent jurisdiction.

9.4 Entire Agreement; Modifications. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement. This Agreement shall not be modified, amended, cancelled or terminated except by an agreement in writing signed by the parties hereto.

9.5 Counterparts. This Agreement may be executed in any number of counterparts by some or all of the parties hereto, each of which shall be an original and all of which shall together constitute one and the same instrument.

9.6 Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association among any of the Parties of this Agreement.

9.7 Further Assurances. Each of the parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

9.8 Mutual Termination. In addition to any other provisions relating to termination of this Agreement contained herein, this Agreement shall terminate upon the written agreement of all the parties hereto, except as otherwise provided in Section 8.3 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

[Remainder of Page Intentionally Left Blank]

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

By: _____
Jerry E. Abramson, Mayor

Approved as to Form and Legality:

Michael J. O'Connell
Jefferson County Attorney

By: 

**LOUISVILLE MEDICAL CENTER
DEVELOPMENT CORPORATION**

By: _____

[Name] [Title]

Approved as to Form and Legality:

By: _____
Name _____
Title: _____